

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1946
 SPONSOR: Senator Sebesta
 SUBJECT: Public Property
 DATE: February 24, 2002 REVISED: 02/26/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Currently, a Department of Management Services' rule requires all state agency leases that exceed one year to contain a right-to-terminate clause. This clause must permit the agency to terminate the lease without penalty if a state owned building becomes available by providing six months advance written notice to the lessor. The bill amends s. 255.25(3)(b), F.S., to provide that replacement leases may be exempted from the requirement of a right-to-terminate clause if the cost of the new lease is at least 10 percent less than the cost of a comparable lease plus documented moving costs.

This bill substantially amends section 255.25 of the Florida Statutes.

II. Present Situation:

The Department of Management Services (DMS) is statutorily charged with the responsibility of overseeing state agency leasing of buildings, and with adopting rules for uniform leasing procedures for all state agencies, except the Department of Transportation.¹ A state agency may not lease a building without prior approval from the DMS of the need for the lease and of its conditions.² Any approved lease may include an option to purchase or renew under conditions established by the DMS.³ Further, DMS rule requires all lease agreements that exceed one year to contain a right-to-terminate clause permitting the agency to terminate the lease without

¹ Section 255.25(2)(c), F.S.; *See also* Chapters 334 and 337, F.S. (granting leasing authority to and establishing leasing procedures for the Department of Transportation).

² Section 255.2(a), F.S.

³ *Id.*

penalty if a state owned building becomes available by providing six months advance written notice to the lessor.⁴

When leasing privately owned building space⁵ a state agency is required to:

- Determine that the lease is in the best interest of the state, and certify to the DMS compliance with all DMS leasing criterion if the lease is for less than 5,000 square feet of building space.⁶
- Receive competitive bids for the needed space, award the lease agreement to the lowest bidder, and obtain approval of the lease and the need therefore from the DMS if the lease is for at least 5,000 square feet.⁷

If an agency wishes to extend an existing lease for 5,000 square feet or more, the agency must first obtain DMS approval.⁸ The maximum extension that may be approved is 11 months. If the agency continues to need space after the 11th month, a new lease must be procured by competitive bid, except that an agency may negotiate a replacement lease if: (a) it determines that it is in its best interest to remain in its current space; (b) an independent comparative market analysis demonstrates that the rates offered are within market rates; and (c) the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. A present-value analysis and the consumer price index must be used in calculating lease costs. Further, the replacement lease's term may not exceed the base term of the expiring lease.⁹

All leases entered into by state agencies for a period in excess of one fiscal year, including renewal periods, must contain a provision stating that, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."¹⁰

III. Effect of Proposed Changes:

Section 1. The bill amends s. 255.25(3)(b), F.S., to provide that replacement leases may be exempted from DMS Rule 60H-1.007, F.A.C., if the cumulative cost of the new lease is at least 10 percent less than the cost of a comparable lease plus documented moving costs. Currently, Rule 60H-1.007, F.A.C., requires all lease agreements that exceed one year to contain a right-to-terminate clause permitting the agency to terminate the lease without penalty if a state owned building becomes available by providing six months advance written notice to the lessor.

Section 2. The bill provides that it takes effect on July 1, 2002.

⁴ Rule 60H-1.007, F.A.C.

⁵ Section 255.248, F.S., defines "privately owned building" as any building not owned by a governmental agency.

⁶ Sections 255.249(4)(k) and 255.25(2), F.S.; Rule 60H-1.002, F.A.C.

⁷ Section 255.25(2) and (3), F.S.; Rule 60H-1.002, F.A.C.

⁸ Section 255.25(3)(b), F.S.

⁹ Section 255.25(3)(b), F.S.; Ch. 2001-267, L.O.F.

¹⁰ Section 255.202, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DMS, private lessors may be able to secure better financing when leasing to state agencies due to the absence of the six-month right-to-terminate clause.

C. Government Sector Impact:

State agencies may be able to negotiate less expensive leases due to the absence of the six-month right-to-terminate clause.

VI. Technical Deficiencies:

The bill creates an exception to a specifically cross-referenced DMS administrative rule. Statutes generally do not contain cross-references to rules. Rules are subject to change; thus, a statutory cross-reference could become obsolete. It is desirable to remove the rule cross-reference from the bill.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

The amendment adds the substance of Rule 60H-1.007, F.A.C., which requires leases to contain a right-to-terminate clause, to s. 255.25(3)(b), F.S., and deletes the bill's cross-reference to the rule.